

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBERT MILLER and)	
RACHEL MILLER, individually and)	Cause No. 1:07-cv-0772-LJM-WTL
b/n/f of J.R.M. and L.S.M., minors,)	
GREGG THEOBALD and)	DEFENDANTS' MOTION FOR
SHAY THEOBALD, individually and)	EXTENSION OF TIME TO
b/n/f of N.P.T., a minor and)	ANSWER AND FOR STAY
CHAD J. SWEENEY, on Behalf of)	OF PROCEEDINGS
Themselves and All Others)	
Similarly Situated,)	
Plaintiffs,)	
)	
v.)	
)	
RC2 CORPORATION, RACING)	
CHAMPIONS ERTL CORPORATION,)	
and LEARNING CURVE BRANDS, INC.,)	
formally doing business as)	
THE ERTL COMPANY, INC., RACING)	
CHAMPIONS ERTL, INC., RC ERTL,)	
INC. and RC2 BRANDS, INC.)	
)	
Defendants.)	

DEFENDANTS' MOTION FOR EXTENSION OF TIME TO ANSWER
AND FOR STAY OF PROCEEDINGS

Come now the Defendants, RC2 Corporation and Learning Curve Brands, Inc., (collectively referred to as "RC2"), and move the Court to extend the time in which Defendants have to answer Plaintiffs' Complaint or otherwise plead and to stay proceedings pending the ruling of the Judicial Panel on Multidistrict Litigation ("JPML") on RC2's Motion for Transfer of Actions to the Northern District of Illinois for Coordinated Pre-Trial Proceedings Pursuant to 28 U.S.C. § 1407 for the following reasons:

1. This case is one of at least thirteen pending federal cases in five federal districts in which plaintiffs seek relief and certification of a nationwide class in connection with their purchase of Thomas & Friends™ Wooden Railway Toys subject to a recall by RC2 Corporation.

2. On August 24, 2007, RC2 filed its Motion for Transfer of Actions to the Northern District of Illinois for Coordinated Pre-Trial Proceedings Pursuant to 28 U.S.C. § 1407 (the "Motion for Transfer") to the Judicial Panel on Multidistrict Litigation in order to determine if the JPML would issue a Transfer Order assigning all of these actions to a single district court.

3. RC2 made its Motion for Transfer because the numerous lawsuits contain common questions of fact and coordination would serve the convenience of the parties and witnesses and would promote the just and efficient conduct of the litigation.

4. At this time, the JPML has not yet ruled on RC2's Motion for Transfer.

5. Although this Court is not required to stay proceedings pending actions by the JPML, it has the discretion to do so. *See* Rule 1.5, Rules of Procedure of the Judicial Panel on Multidistrict Litigation.

6. A stay of proceedings pending the JPML's ruling will not prejudice the Parties and will preserve resources of the Court and Parties by preventing any discovery or pleadings from occurring that may be duplicative or inconsistent with coordinated pretrial proceedings should the JPML grant RC2's Motion for Transfer and issue a Transfer Order.

7. At this time, the Answer to Plaintiffs' Amended Complaint is due on September 16, 2007. An Initial Pretrial Conference has been scheduled for September 14, 2007.

8. RC2 will promptly notify the Court of the JPML's ruling on the Motion for Transfer as soon as RC2 learns of its ruling.

WHEREFORE, RC2 respectfully requests that the Court extend the time in which RC2 has to answer or otherwise plead until thirty (30) days following either the transfer of this case or the denial of RC2's Motion to Transfer and to stay proceedings in this case pending ruling of the Judicial Panel on Multidistrict Litigation on RC2's Motion for Transfer of Actions to the Northern District of Illinois for Coordinated Pre-Trial Proceedings Pursuant to 28 U.S.C. § 1407.

Respectfully submitted,

ICE MILLER

s/ Judy S. Okenfuss

Judy S. Okenfuss

Attorney No 16157-49

Attorney for Defendants.

ICE MILLER LLP
One American Square
Suite 3100
Indianapolis, IN 46282-0200
(317) 236-2100

I/1994950.1

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically on the ____ day of _____, 2007. Notice of the filing will be sent to the following parties by operation of the Court's electronic filing system. The following parties may access this filing through the

Court's system:

Jamie Ranah Kendall
William N. Riley
PRICE WAICUKAUSKI & RILEY
301 Massachusetts Avenue
Indianapolis, IN 46204

Jeffrey Aaron Cooke
THE COOKE LAW FIRM
331 Columbia Street
Lafayette, IN 47902

s/ Judy S. Okenfuss
Judy S. Okenfuss
ICE MILLER LLP
One American Square
Suite 3100
Indianapolis, Indiana 46282-0200
(317) 236-2100
e-mail: judy.okenfuss@icemiller.com